

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AVKO EDUCATIONAL RESEARCH
FOUNDATION, a Michigan
Corporation, and DONALD J.
MCCABE, author,

Plaintiffs/ Counter Defendants

v.

Case No.: 1:11-cv-13381-TLL-CEB
Honorable Thomas L. Ludington
Magistrate Charles E. Binder

THOMAS A. MORROW, an individual,
WAVE 3 LEARNING, INC.;
HOME SCHOOL HOLDINGS, INC.,
and HOME SCHOOL, INC;

Defendants/ Counter Plaintiffs

SUSAN PAYNE WOODROW (P29844)
SUSAN PAYNE WOODROW JD, PC
Attorney for Plaintiffs
PO Box 300833
Drayton Plains, MI 48300
(248) 760-1818
suzywoodrow@hotmail.com

MARK G. CLARK (P41652)
JOHN DI GIACOMO (P73056)
TRAVERSE LEGAL, PLC
Attorneys for Defendant
Thomas A. Morrow and
Wave 3 Learning, Inc.
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684
(231) 932-0411
mark@traverselegal.com
john@traverselegal.com

**DEFENDANTS/ COUNTER-PLAINTIFFS THOMAS A. MORROW AND WAVE3
LEARNING'S
MOTION FOR DEFAULT**

In accordance with Fed. R. Civ. P 55(b)(2) Defendant Counter-Plaintiffs,
Thomas A. Morrow and Wave 3 Learning, hereby move for entry of default
against Plaintiff/Counter-Defendants, AVKO Educational Research Foundation

and Donald J. McCabe. In support of this Motion, Defendant Counter Plaintiff's states:

1. The Complaint in the matter alleges the following causes of action: Copyright Infringement, Breach of Contract, Fraud and Misrepresentation in the Inducement, Intentional Infliction of Emotional Distress, Injunction. This Complaint was filed in the Circuit Court of Saginaw County and was removed to this Court by Plaintiff/ Counter-Defendants.

2. Morrow/ Wave 3 timely filed an answer to this Complaint on August 26, 2011, and asserted counter claims of Fraud in the Inducement, Breach of Contract /Implied Warranty of Title, Unjust Enrichment, Defamation, Defamation Per Se, and Tortious Interference with a Business Relationship or Expectancy.

3. AVKO/ McCabe's answer to these counter claims and affirmative defenses was due September 16, 2011. Morrow/Wave 3 submitted a Request for Entry of Default on September 21, 2011 which was denied after AVKO/McCabe filed a response on the same day, five days after the answer was due.

4. Morrow/ Wave 3 submitted a Request for Entry of Default to the Clerk on September 21, 2011. After this request was submitted, AVKO/ McCabe filed a response on September 22, 2011, five days after the answer was due. Subsequently, the Request for Entry of Default was denied.

5. Morrow/Wave 3 filed a Motion for Reconsideration of the Denial of the Request for Clerk's Entry of the Default and later withdrew this motion when the parties agreed to Morrow/Wave 3's filing of a *Stipulation to File A First Amended*

Answer to Plaintiff's Complaint and First Amended Counter Claim, which was filed with this court on October 26, 2011.

6. Once again, AVKO/McCabe has failed to timely file an answer to this amended Complaint and Counter Claim which they had stipulated to. Thirty seven days after being served, on December 2, 2011, they filed a response to the amended Complaint. AVKO/McCabe never requested a stipulation to extend the time to answer or initiated settlement discussions during this time. Yet their answer was filed sixteen days after it was due.

7. Additionally, they did not respond to e-mail correspondence sent to them on November 21, 2011, and again November 28, 2011, simply seeking information on witnesses attendance at the hearing scheduled for December 12, 2011.

WHEREFORE, for the reasons stated above and for the reasons stated in the attached Brief in support of this motion Defendants/ Counter Plaintiffs, Morrow and Wave 3, respectfully request this honorable court to enter a default judgment against Plaintiff / Counter-Defendants AVKO and McCabe.

Respectfully submitted,

TRAVERSE LEGAL, PLC

Dated: December 5, 2011

/s/ John Di Giacomo
By: John Di Giacomo (P73056)
Attorneys for Defendants / Counter Plaintiffs, Thomas A. Morrow and Wave 3 Learning, Inc.
810 Cottageview Drive, Unit G-20
Traverse City, MI 49686
231-932-0411

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

AVKO EDUCATIONAL RESEARCH
FOUNDATION, a Michigan
Corporation, and DONALD J.
MCCABE, author,

Plaintiffs,

v.

THOMAS A. MORROW, an individual,
WAVE 3 LEARNING, INC.;
HOME SCHOOL HOLDINGS, INC.,
and HOME SCHOOL, INC;

Defendants.

Case No.: 1:11-cv-13381-TLL-CEB
Honorable Thomas L. Ludington
Magistrate Charles E. Binder

SUSAN PAYNE WOODROW (P29844)
SUSAN PAYNE WOODROW JD, PC
Attorney for Plaintiffs
PO Box 300833
Drayton Plains, MI 48300
(248) 760-1818
suzywoodrow@hotmail.com

MARK G. CLARK (P41652)
JOHN DI GIACOMO (P73056)
TRAVERSE LEGAL, PLC
Attorneys for Defendant
Thomas A. Morrow and
Wave 3 Learning, Inc.
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684
(231) 932-0411
mark@traverselegal.com
john@traverselegal.com

**BRIEF IN SUPPORT OF DEFENDANT THOMAS MORROW AND WAVE 3
LEARNING'S MOTION FOR DEFAULT**

NOW COMES Defendants Thomas Morrow and Wave 3 Learning, Inc.
and, for their *Brief in Support of their Motion for Default*, state as follows:

The Complaint in this matter was originally filed in the Circuit Court for Saginaw County and alleged Copyright Infringement, Breach of Contract, Fraud and Misrepresentation in the Inducement, Intentional Infliction of Emotional Distress, and Injunction. Defendants/ Counter Plaintiffs, Morrow and Wave 3 Learning removed this matter to this Court.

Morrow / Wave 3 promptly attempted to initiate settlement discussions with AVKO / McCabe and filed a stipulated order to extend the deadline to respond to the complaint to September 15, 2011 as the parties explored settlement. Morrow/ Wave 3 timely filed an Answer to the Complaint on August 26, 2011, which asserted affirmative defenses and the counter-claims of Fraud in the Inducement, Breach of Contract /Implied Warranty of Title, Unjust Enrichment, Defamation, Defamation Per Se, and Tortious Interference with a Business Relationship or Expectancy. A response to these counter claims was due on September 16, 2011.

AVKO/McCabe failed to request an extension of time to file a response prior to the due date of September 16, 2011. On September 17, 2011 AVKO/ McCabe requested an extension of the time to answer, stating that Attorney Woodward was in the hospital and unable to provide a response. On September 21, 2011, Thomas Morrow/Wave 3 Learning submitted a Request for Default with the Clerk. Subsequently, on September 22, 2011, AVKO/McCabe filed a late response, five days late to the counter claims. The Court denied Defendants'/Counter-Plaintiffs' Request for Entry of Default on September 27, 2011.

Morrow/Wave 3 filed a Motion for *Reconsideration of the Denial of the Request for a Default*, which they later withdrew when the parties agreed to Morrow/Wave 3's filing of a *Stipulation to File a First Amended Answer to Plaintiff's Complaint and First Amended Counter Claim*, which was filed with this court on October 26, 2011.

Once again, without requesting an extension of time to respond to the amended answer and counterclaims, AVKO/McCabe filed an answer to Morrow/Wave 3's amended answer and counter claims thirty-seven days after being served. Additionally, they have been unresponsive to email correspondences on sent on November 21st and again on November 28th, which were simply attempting to clarify the identity of witnesses that would be in attendance at the hearing scheduled for December 12, 2011. Consequently, Defendants hereby request that the Clerk enter a Default for Plaintiff's failure to timely respond.

Respectfully submitted,

TRAVERSE LEGAL, PLC

Dated: December 5, 2011

/s/ John Di Giacomo
By: JOHN DI GIACOMO (P73056)
Attorneys for Defendants / Counter Plaintiffs, Thomas A. Morrow and Wave 3 Learning, Inc.
810 Cottageview Drive, Unit G-20
Traverse City, MI 49686
231-932-0411
john@traverselegal.com

CERTIFICATE OF SERVICE

Documents:

- *Defendant's Motion for Default Judgment and Brief in Support*

I hereby certify that on September 27, 2011 the referenced document was electronically filed with the court and served via the courts ECF system upon:

SUSAN PAYNE WOODROW
Attorney for Plaintiff
suzywoodrow@hotmail.com

and served via U.S mail upon;

Home School Holdings, Inc.
1153 So. Lee Street, Suite 198
Des Plaines, IL 60016

Home School, Inc.
1153 So. Lee Street, Suite 198
Des Plaines, IL 60016

Dated: December 5, 2011

/s/ John Di Giacomo
TRAVERSE LEGAL, PLC
John Di Giacomo
810 Cottageview Drive
Unit G-20
Traverse City, MI 49684